IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9116 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ISMAILBHAI RASULBHAI CHAUHAN

Appearance:

1. Special Civil Application No. 9116 of 2002

MR KS JHAVERI for Petitioner No. 1

MR JASWANT K SHAH for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 19/02/2003

ORAL JUDGEMENT

Heard the learned advocates appearing for both the parties. The learned advocate Mr.K.S. Jhaveri

appearing for the petitioner relies on a judgement of this Court (Coram : N.G. Nandi, J.) in the matter of Gujarat State Road Transport Corporation v. Shankerbhai Panabhai Bhoi, reported in XLIII (2) G.L.R. 1057. The learned advocate for the respondent has a difficult task of defending a judgement and award which cannot be done in light of the aforesaid decision of this Court. He acquiesces in he reasoning given in the above judgement. Hence adopting the reasoning given in the above judgement this petition is allowed.

2. The petitioner has challenged the order passed in Reference (LCA) No.1664 of 1999 dated 24.8.2000 by the learned Labour Court, Ahmedabad directing reinstatement of the respondent herein with 75 % back wages.

3. The facts of the case are as under:

The respondent herein was serving with the petitioner, Gujarat State Road Transport Corporation ("the Corporation" for brevity) as a conductor. It is alleged that from 20.12.1994 to 20.1.1995 the respondent remained unauthorisedly absent. On 20.12.1994, the respondent was supposed to attend his duties on a trip of Dholka -Saragwada route, but he did not turn up, nor did he send any intimation. The corporation was required to make alternate arrangement at the last minute. The respondent was issued charge sheet on 30.1.1995. A departmental inquiry was held against him affording opportunities to defend. On completion of inquiry, a show cause notice was issued on 11.4.1995. The respondent did not reply to controvert the said show cause notice. Hence the charges levelled against the respondent workman were held proved. There is nothing on record to suggest that against the dismissal order in the inquiry proceedings the employee preferred any departmental appeal. The respondent workman, after long five years of passing of the order of dismissal, preferred compliant before the Labour Commissioner, which was referred to the Labour Court and registered as Reference (LCA) No.1664 of 1999.

4. It is submitted by Mr.Jhaveri, the learned counsel for the petitioner that the impugned order reinstating the respondent workman in service and directing payment of 75% back wages is illegal and could not have been passed looking to the gross misconduct committed by the respondent workman. He submitted that no back wages should have been awarded inasmuch as it effects the public exchequer and also in view of the fact that the unauthorised absence of the respondent had resulted into rescheduling of bus route, which resulted into a financial loss to the petitioner corporation

besides the passengers were put to inconvenience.

5. Mr.Zaveri submitted that even in the departmental inquiry, the respondent delinquent did not remain present nor did he give any explanation as to why he remained absent without prior intimation to the petitioner corporation.

6. Mr.Jhaveri, the learned advocate for the petitioner placed reliance on the decision in the case of Maganbhai L. Chauhan v. Divisional Controller, GSRTC, reported in 1999 (1) GLH 527 (D.B.) also and contended that the employee connected with public services cannot be treated leniently especially when in the inquiry proceedings the misconduct is proved.

7. In the instant case, the respondent has been reinstated in service by the petitioner as no stay was granted against the reinstatement by this Court on 13.9.2002 while issuing 'rule'. This Court did not incline to interfere with the reinstatement part of the judgement and award as any interference would economically suffocate the innocent family members of the workman for no fault of theirs.

8. As far as the award of 75% back wages is concerned, the misconduct has been proved in the departmental proceedings which were allowed to go ex parte by the petitioner. There is no explanation coming forth from the respondent workman as to what prevented him from reporting for duty for a period spanning over one month. Generally, reinstatement would be followed by back wages, but the grant of and the extent thereof would depend upon the facts of each case. As pointed out above in the instant case, the conduct of the respondent employee is eloquent inasmuch as he did not reply the show cause notice and the charge sheet, nor did he bother to remain present in the departmental inquiry and allowed the same to proceed ex parte. It is stated by the learned advocate for the petitioner that the respondent workman was dismissed from service on 4.5.1995 pursuant to order passed in the departmental proceedings and the respondent employee moved the State Govt. for reference under sec.10 of the Act in the year 1999. Thus, for four years the respondent employee slept over his rights and did not move in the matter. Having regard to the facts and circumstances aforesaid, the order as regards grant of back wages deserves to be set aside.

9. In the result, the impugned order dated 24.8.2002 in Reference (LCA) No.1664 of 1999 passed by the learned

Labour Court, Ahmedabad is set aside to the extent it awards 75 % back wages to the respondent employee. The rest of the impugned award is not interfered with. The petition is disposed of accordingly. Rule is made absolute to the above extent. No order as to cost.

(Ravi R. Tripathi, J.)

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